IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.135 OF 2006

M/s.Project Engineers. ...Petitioner.

vs.

Oil & Natural Gas Corporation Ltd. ...Respondent.

Mr.R.D.Dhanuka i/b. Ms.Vaishali Choudhary, for Petitioner.

Mr.P.A.Sawant i/b. M/s.Vyas & Bhalwal, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 11th September,2006.

P.C.:-

1. By this petition, the petitioner challenges the Award made by the sole arbitrator. By the said Award the learned Arbitrator has awarded certain claims made by the petitioner-claimant and has rejected certain claims made by the petitioner-claimant. The Award made by the learned Arbitrator is challenged by the claimant-petitioner on several grounds. The principal ground of challenge is that the Award made by the learned Arbitrator suffers from non application of mind. So far as claim no.1(iii) i.e. recovery for excess use of cement is concerned, the claim is rejected by the learned Arbitrator relying on some established trade practice which admittedly was not accepted by both the

sides. There was no evidence led by both the sides about the existence of any trade practice showing that the norms laid down by the Central Public Works Department was to be accepted by both the parties in so far as consumption of cement is concerned. The Award made by the learned Arbitrator against claim no.1(iii), therefore, clearly is not based on any material available on record.

2. So far as the Award made against the claim no.1(iv) is concerned, it was a claim for recovery of cost of Dholpur tiles. It appears that the claimant has admitted that there was some defect in the work and the claimant was agreeable to have 80,000/- deducted from the final bill. But according to the respondent the amount of Rs.3,55,210.52 was to be deducted because, according to them, that was the amount spent by them for carrying out repairing work. Admitted position is that the respondent did not lead any evidence to shows that the respondent carried out any repairing work or had spent any amount. The relevant paragraph of the Award is paragraph 24.11 which read as under:-

> "24.11. The Recovery statement shows that the repairs and rectifications had to be carried out by the Respondents through other agencies. According to the Respondents, a sum of Rs.3,55,210.52 is the actual expenditure incurred by them for paying the charges of the other agencies. True, that the Respondents must have paid sum amount in this behalf to the other agencies. But, one of the basic difficulties with which one is confronted in

> these proceedings is that no oral evidence whatsoever was led either by the Claimant or by the Respondents. It is elementary that documents do not prove themselves. If the contents thereof or the details mentioned therein are disputed by the other side, the documents have to be proved by leading oral evidence. In the circumstances, I find it difficult to accept that a sum of Rs.3,55,210.52 was in fact paid by the Respondents to the other agencies. Taking all circumstances of the case into account, I reduce the sum of Rs.3,55,210.52 to Rs.1,75,000. Accordingly, the Claimant would be entitled to recover from the Respondents the difference between the two sums which comes to Rs.1,80,210."

Perusal of the above quoted paragraph shows that the learned Arbitrator has fixed the amount of Rs.1,75,000/-, when even according to the learned Arbitrator there is no material available on record to arrive at that amount. In my opinion, the above quoted paragraph in the Award is enough to set aside the entire award as it suffers from non application of mind. The Court under section 34 of the Arbitration and Conciliation Act 1996 has no power to modify the Award. Power to modify the Award is given by Section 34 of the Act to the Court only when in the Award some claims which do not form part of the submission to arbitration are decided. In all other case the Court can either set aside the Award or can dismiss the petition and confirms the Award. As I find that the Award is required to be set aside because the findings recorded by the learned Arbitrator suffers from non application of mind, I have no other

alternative but to set aside the Award. The petition therefore, succeeds. The Award impugned in the petition is set aside. The petitioner is left to his own remedy available in the Act.